



THE COMMONWEALTH OF MASSACHUSETTS  
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September 13, 2007

To the Honorable Senate and House of Representatives:

Pursuant to Article LXXXVII of the Amendments to the Constitution, I am filing for your consideration the attached legislative proposal, entitled "An Act Increasing the Efficiency, Effectiveness, and Fairness of the Commonwealth's Labor Relations Agencies."

The legislation restructures and consolidates the Labor Relations Commission, Board of Conciliation and Arbitration, and Joint Labor-Management Committee into a new Division of Labor Relations located within the Department of Labor.

The legislation has three principal purposes: (1) to maximize the efficient use of existing labor relations resources; (2) to professionalize the management of those resources; and (3) to protect adjudicatory independence.

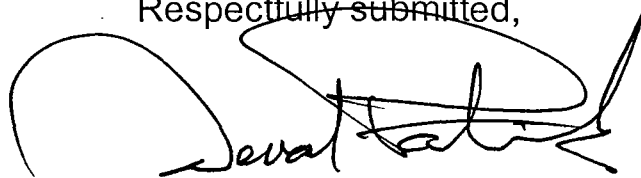
Under the current system, efficiency is impeded by having three separate agencies with overlapping functions, duplicative costs, and staffs that cannot be redirected across agency lines to handle shifting demands. Administrative operations are overseen by commissioners whose expertise lies in adjudication, not management. Finally, there has been no objective method for appointing commissioners, resulting in a politicization of the process. The result has been a significant backlog in cases and diminished credibility in the resolution of those cases.

The legislation addresses these problems by consolidating the staff of the existing agencies, thus increasing the flexibility to target resources where they are needed, while eliminating duplication of

effort and costs. The staff will be managed by a professional administrator, which will free up the adjudicators to focus on what they do best: adjudicating. The appointment process will be depoliticized by empowering an advisory council to solicit and nominate qualified candidates for consideration. Finally, the legislation safeguards the autonomy and independence of the agency in performing its adjudicatory functions.

I urge your prompt and favorable consideration of this bill to increase the effectiveness and fairness of the Commonwealth's labor relations agencies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deva Talwar", with a large, sweeping flourish above the name.



# The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND SEVEN

## AN ACT

### INCREASING THE EFFICIENCY, EFFECTIVENESS, AND FAIRNESS OF THE COMMONWEALTH'S LABOR RELATIONS AGENCIES

Be it approved by the Senate and the House of Representatives in General Court assembled, pursuant to Article LXXXVII of the Amendments to the Constitution, and by the authority of the same, as follows:

~~Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:~~

SECTION 1. Sections 17D and 17E of chapter 6A of the General Laws are hereby repealed.

SECTION 2. Subsection (c) of section 1A of chapter 23 of the General Laws, as appearing in section 15 of chapter 19 of the acts of 2007, is hereby amended by striking out the words "the division of conciliation and arbitration, the labor relations commission, the joint labor-management committee" and inserting in place thereof the following words:- the division of labor relations.

SECTION 3. Section 3 of chapter 23, as appearing in the 2006 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the following section:-

(a) Within the department, there shall be the following agencies and divisions: the division of industrial accidents, the division of labor relations, and the division of occupational safety.

SECTION 4. Subsection (c) of section 3 of chapter 23 is hereby repealed.

SECTION 5. Chapter 23 is further amended by striking out sections 9O, 9P, 9Q and 9R and inserting in place thereof the following 7 sections:-

Section 9O. There shall be within the department of labor a division of labor relations, in this and the following 6 sections called the "division," which shall be administered by a director, who shall be appointed by the governor. The division shall include: (1) a dispute resolution office; (2) an advisory council; (3) the commonwealth employment relations board; and (4) the joint labor-management committee. The division and its staff shall be subject to the jurisdiction of the department of labor for all administrative functions, but shall not be subject to the department of labor in the performance of adjudicatory functions, including but not limited to the assignment, evaluation, hiring, and firing of individual adjudicatory personnel.

It is hereby declared to be the public policy of the commonwealth that the best interests of the people of the state are served by the prevention or prompt settlement of labor disputes; and it shall be the responsibility and objective of the division to take such steps as will most effectively and expeditiously encourage the parties to a labor dispute to agree on the terms of a settlement or to agree on the method and procedure which shall be used to resolve a dispute.

It is recognized that a constructive and harmonious long-term collective bargaining relationship is the most positive way to avoid labor disputes, and such a relationship can be effectively developed in the public sector through the use of joint labor management committees.

Section 9P. The dispute resolution office shall consist of hearing officers, mediators, arbitrators, investigators, and other skilled professionals who shall attempt,

through the use of pre-hearing investigative conferences, expedited hearings, mediation, deferral to arbitration, and other dispute resolution procedures, to resolve any labor dispute brought to the attention of the division. Such staff may be assigned to investigate labor disputes pursuant to section 11 of chapter 150E, to mediate labor disputes pursuant to section 9 of chapter 150E, to assist the joint labor-management committee in the investigation of disputes involving municipal police and fire departments, and to perform such other duties as the division may require.

Section 9Q. (a) There shall be an advisory council to advise the division concerning policies, practices, and specific actions that the division might implement to better discharge its labor relations duties. The director shall provide for the council suitable meeting space and such clerical and other assistance as the director and the council may deem necessary.

(b) The advisory council shall consist of 13 members to be appointed by the governor, 5 of whom shall be members or representatives of public sector labor unions, 5 of whom shall be representatives of public sector managers, including the director of employee relations for the commonwealth, and 3 of whom shall be at large members. Seven members shall constitute a quorum for purposes of holding a meeting and voting. No action shall be taken by the council without the affirmative vote of at least 7 members. All members of the advisory council shall serve without compensation and at the pleasure of the governor. The advisory council shall meet no less than quarterly during each calendar year. Meetings of the advisory council shall be called by the chair or upon petition by a majority of voting members. Such meetings shall be subject to section 11A 1/2 of chapter 30A. The director of

labor, the chair of the commonwealth employment relations board, and the director of the division shall serve as ex-officio non-voting members of the advisory council.

(c) The governor shall, from time to time, designate one of the council members as chair of the advisory council. The chair shall serve for no more than 2 years, and the position shall rotate among employee, employer, and at large members. No member of the advisory council shall be subject to chapter 31.

(d) With the approval of the advisory council, the director of labor may establish standards regarding the performance of the division, and require periodic reports from the director of the division regarding the division's attainment of such standards.

Section 9R. (a) There shall be in the division of labor relations a commonwealth employment relations board, in this and the following 5 sections called the "board," consisting of 3 members to be appointed by the governor. The board shall in no respect be subject to the jurisdiction of the department of labor except to the extent of compliance with reasonable requests from the director for the sharing of information which does not interfere with the efficient and independent functioning of the board. Each member of the board shall be appointed for a term of 5 years; provided, however, that a term of appointment shall be shortened, if necessary, to ensure that the members' terms are staggered such that a term expires every 2 years. Any vacancy in the board shall be filled by appointment in like manner. No more than 2 members shall be from the same political party. Upon the expiration of the term of any member, her successor shall be appointed in like manner. Any member may be removed by the governor for neglect of duty or malfeasance in office, but for no other cause.

(b) The governor shall designate one of the members of the board as chair.

The chair shall be responsible for convening meetings of the board. The position of chair shall be classified in accordance with section 45 of chapter 30 and the chair's salary shall be determined in accordance with section 46C of said chapter 30. The chair shall devote her full time to the duties of her office and shall not engage in other employment or business activities during regular business hours.

(c) The board members other than the chair shall serve on a per diem basis, to be reimbursed at an appropriate rate to be established by the director, in consultation with the advisory council. The board members shall hold no other public office or public employment in the commonwealth, and shall devote whatever time is necessary to fulfill the obligations of their positions.

(d) Pursuant to section 11 of chapter 150E, the members shall be responsible for reviewing orders and issuing decisions.

(e) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the board, and 2 members of the board shall at all times constitute a quorum. The board shall have an official seal which shall be judicially noticed.

(f) The appointment or reappointment of a member shall be made by the governor from names submitted to the governor by the advisory council. Before any appointment or reappointment to the position of member of the commonwealth employment relations board, the advisory council shall review all applications for such nominations and consider the following factors: (1) basic understanding of the commonwealth's public sector labor relations law; (2) skills in decision-making; (3) a law degree; and (4) demonstrated

familiarity with legal processes. The advisory council shall rank each candidate as qualified, unqualified, or highly qualified. The governor may select 1 or more candidates recommended by the advisory council; provided, however, that the governor may decline to appoint any of the proffered candidates, in which case the council shall reopen the application process and submit new candidates for the governor's consideration.

(g) Attorneys employed by the division may appear for and represent the board in any case in court.

Section 9S. There shall be within the division the joint labor-management committee as established by chapter 1078 of the acts of 1973, and as most recently amended by chapter 589 of the acts of 1987.

Section 9T. (a) The division shall be administered by a director, who shall be appointed by the governor to serve for a term coterminous with that of the governor. The position of director shall be classified in accordance with section 45 of chapter 30 and the salary shall be determined in accordance with section 46C of said chapter 30. The director shall devote her full time to the duties of her office and shall not engage in other employment or business activities during regular business hours.

(b) The appointment or reappointment of the director of the division shall be made by the governor from names submitted to the governor by the advisory council. Before any appointment or reappointment to the position of director of the division, the advisory council shall review all applications for such nominations and consider the following factors: (1) basic understanding of the commonwealth's public sector labor relations law; (2) skills and experience in managing organizations; and (3) any other relevant experience and education. The advisory council shall rank each candidate as qualified, unqualified, or highly

qualified. The governor may select 1 of the candidates recommended by the advisory council; provided, however, that the governor may decline to appoint any of the proffered candidates, in which case the council shall reopen the application process and submit new candidates for the governor's consideration. Any director may be removed by the governor for neglect of duty or malfeasance in office, or for the division's failure to meet the performance standards as set forth in subsection (d) of section 9Q, but for no other cause.

(c) The director shall be the executive and administrative head of the division and shall have charge of the administration of the division. The director shall have the authority, pursuant to chapter 30A, and after consultation with the advisory council and the members of the commonwealth employment relations board, to issue any regulation for the enforcement and administration of the provisions of this section and the 3 following sections, as well as chapters 150, 150A, and 150E. The director shall prepare an annual operating budget and other funding requirements and requests pursuant to this chapter to be submitted to the executive office of labor and workforce development.

(d) In addition to the responsibilities specified above, the director's duties shall include, but not be limited to, the following:

(i) the training of newly appointed board members, hearing officers, mediators, arbitrators, investigators, and any other staff as to their responsibilities and powers, including, but not limited to: the conduct of investigations, conferences, hearings, and mediations; the prompt, clear, and concise writing of decisions; and the prompt resolution of labor disputes brought to the attention of the division;

(ii) the establishment of an annual training program to instruct all board members, hearing officers, mediators, arbitrators, investigators, and any other staff as the director deems appropriate, in matters related to their professional development;

(iii) the establishment of reasonable criteria, in conjunction with the general counsel, and after consultation with the advisory council, upon which to perform an annual review of each board member;

(iv) the establishment of performance standards for all of the functions of the division;

(v) the appropriate allocation of all disputes brought to the attention of the division, to ensure that all professional staff receive balanced and equitable case loads; and

(vi) the hiring, supervision, and evaluation of hearing officers, mediators, arbitrators, investigators, and other staff, for the purpose of fostering more effective resolution of disputes brought to the attention of the division.

(e) While the director shall have oversight over the performance of hearing officers, arbitrators, and other staff, neither the director nor any other person may interfere with, influence, or overrule any written opinion issued by the division's staff or by the board. Any such decision may only be overruled by the members of the commonwealth employment relations board or a court, in accordance with applicable law.

Section 9U. The division shall, within 120 days of the close of each fiscal year, make a detailed report in writing to the general court, including without limitation: the number and types of cases filed with the division, including elections, and the disposition of all such cases; statistics regarding the number of decisions it has rendered and unresolved cases, and the timeliness of the division's decisions; the names, salaries, and duties of all

employees and officers in the employ or under the supervision of the division; and an account of all moneys it has disbursed.

SECTION 6. Chapter 23C of the General Laws is hereby repealed.

SECTION 7. Chapter 150E of the General Laws is hereby amended by striking out section 11 and inserting in place thereof the following section:-

Section 11. (a) When a complaint is made to the division that a practice prohibited by section 10 has been committed, the director may refer the matter to an investigator. The employer, the employee organization, or the person so complained of shall have the right to file an answer to the original or amended complaint within 5 days after the service of such complaint or within such other time as the division may require. Before the receipt of any answer, any complaint may be amended as of right, and, after the receipt of any answer, only with the permission of the division.

(b) The investigator may issue an order dismissing the complaint, deferring any complaint which is the subject of a pending grievance or arbitration, referring any complaint to one of the division's mediators, or directing that a hearing take place. Unless the complaint is dismissed, deferred, or referred, the investigator shall promptly meet with the parties, investigate whether settlement of the complaint is possible, clarify and narrow the issues before the complaint is forwarded to a hearing, or dismiss the complaint without a hearing. The investigator may dismiss the complaint if she finds no probable cause to believe that a violation of this chapter has occurred or if she otherwise determines that further proceedings would not effectuate the purposes of this chapter.

(c) If a hearing is ordered, the division shall set the time and place for the hearing, which time and place may be changed by the division at the request of one of the parties for

cause shown. Any party may file a motion to dismiss the complaint or for a summary decision prior to a hearing. At the hearing, which shall be presided over by a hearing officer, the employer, the employee organization, or the person so complained of shall have the right to appear in person or otherwise to defend against the complaint. At the discretion of the division, any person may be allowed to intervene in such proceeding. In any hearing, the division shall not be bound by the technical rules of evidence prevailing in the courts. The testimony, if any, may be preserved by a taped recording or, at the discretion of the parties who shall be responsible for the costs thereof, by stenographic transcription.

(d) At the conclusion of the hearing, the hearing officer shall issue written findings of fact and shall determine whether a practice prohibited under section 10 has been committed and, if so, shall issue an order requiring the charged party to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. The hearing officer shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this chapter. If the hearing officer determines that a practice prohibited under section 10 has not been or is not being committed, the hearing officer shall state her findings of fact and issue an order dismissing the complaint.

(e) Any order issued pursuant to this section shall become final and binding unless, within 10 days after notice thereof, any party requests a review by the board. A review may be made upon the record, which shall consist of the pleadings, motions, rulings,

and the testimony taken at the hearing, if any, or upon such portions of the record as the parties may designate.

(f) Upon any complaint made under this section and a petition filed by one or more parties to the proceeding, the board, in its discretion, and for good cause shown, may order that the hearing be conducted by the board itself. At such hearing the employer, the employee organization or the person so complained of shall have the right to appear in person or otherwise to defend against such complaint. At the discretion of the board, any person may be allowed to intervene in such proceeding. In any hearing, the board shall not be bound by the technical rules of evidence prevailing in the courts. The testimony, if any, may be preserved by a taped recording or, at the discretion of the parties who shall be responsible for the costs thereof, by stenographic transcription.

(g) At the conclusion of the hearing, the board shall state its findings of fact and shall determine whether a practice prohibited under section 10 has been committed and if so, it shall issue an order requiring the charged party to cease and desist from such prohibited practice, and shall take such further affirmative action as will comply with the provisions of this section, including but not limited to the withdrawal of certification of an employee organization established by or assisted in its establishment by any such prohibited practice. The board shall order the reinstatement with or without back pay of an employee discharged or discriminated against in violation of the first paragraph of this chapter. If the board determines that a practice prohibited under section 10 has not been or is not being committed, it shall state its findings of fact and issue an order dismissing the complaint.

(h) Whenever it is alleged that a party has refused to bargain collectively in good faith with the exclusive representative as required in section 10 and that such refusal is based

upon a dispute involving the appropriateness of a bargaining unit, the division shall, except for good cause shown, issue an interim order requiring the parties to bargain pending its determination of the dispute. Where such interim order is issued, the board shall hold a hearing on the charge in a summary manner and shall speedily determine the issues raised and shall make an appropriate decision.

(i) The board may institute appropriate proceedings in the appeals court for enforcement of its final orders. Any party aggrieved by a final order of the board may institute proceedings for judicial review in the appeals court within 30 days after receipt of the order. The proceedings in the appeals court shall, insofar as applicable, be governed by section 14 of chapter 30A. The commencement of such proceedings shall not, unless specifically ordered by the court, operate as a stay of the board's order.

SECTION 8. Notwithstanding any general or special law to the contrary, the division shall have all of the legal powers, authorities, responsibilities, duties, rights, and obligations previously conferred on the labor relations commission, the board of conciliation and arbitration, and the joint-labor management committee, including without limitation those set forth in chapter 23C, chapter 150, chapter 150A, and chapter 150E of the General Laws. The commissioners of the labor relations commission holding office upon the effective date of this act may serve on the commonwealth employment relations board until the expiration of their current terms.

SECTION 9. This act shall take effect as soon as it has the force of law under subsection (c) of section 2 of Article LXXXVII of the Amendments to the Constitution.